

**Malibu City Council**  
**AMENDED<sup>1</sup> Adjourned Regular Meeting Agenda**

**Thursday, September 11, 2003**

**5:30 P.M. – CLOSED SESSION**  
**City Hall – Large Conference Room**  
**23815 Stuart Ranch Road**

**6:30 P.M. – REGULAR CITY COUNCIL MEETING**  
**City Hall – Council Chambers**  
**23815 Stuart Ranch Road**

**Five-thirty p.m. Closed Session**

*This time has been set aside for the City Council to meet in a closed session to discuss matters of pending litigation pursuant to Government Code Sections 54956.9(a) and 54956.9(b). Based on the advice of the City Attorney discussion in open session concerning these matters would prejudice the position of the City in this litigation. The City Attorney will give an additional oral report regarding the closed session at the beginning of the next regular City Council meeting.*

**Public Comment on Closed Session Items**

**Existing litigation per Government Code Section 54956.9 (a):**

1. Chicksands Properties LTD. v. City of Malibu et al.  
Los Angeles County Superior Court Case No. BS072081
2. City of Malibu v. California Coastal Commission (Streisand Center Coastal Permit)  
Los Angeles County Superior Court Case No. BC230410
3. City of Malibu v. California Coastal Commission / TLC / Liebig (Referendum)  
Los Angeles County Superior Court Case No. SS011355
4. City of Malibu v. California Coastal Commission (AB988 / LCP)  
Los Angeles County Superior Court Case No. SC074641

Related cases (city named as a party in interest):

- a. Rick Appel v. California Coastal Commission  
Case No. SC074658
- b. Ralph Herzig v. California Coastal Commission  
Case No. SS011382
- c. Land Use Preservation v. California Coastal Commission  
Case No. SS011388
- d. Riverview Farm Associates v. California Coastal Commission  
Case No. SS011383
- e. Brian Sweeney v. California Coastal Commission  
Case No. SS011387
- f. Trancas-PCH v. California Coastal Commission  
Case No. SC074640

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<sup>1</sup> See new Consent Calendar Item No. 3.B.9.

See new Councilmember Items - Item No. 7.A.

- g. Tuna Ridge v. California Coastal Commission  
Case No. SC011381
- h. Land Use Preservation Defense Fund v. California Coastal Commission  
Los Angeles County Superior Court Case No. SS011388
  
- 5. City of Malibu, et al. v. County of Ventura, et al. (Ahmanson Ranch)  
Ventura County Superior Court Case No. CIV 216938
  
- 6. City of Malibu / Geffen v. Access for All / Coastal Commission et al  
Los Angeles County Superior Court Case No. BC277034
  
- 7. United States of America ex rel. Darian v. Accent Builders inc. et al.  
United States District Court Case No. CV00-10255-FMC(JWJx)
  
- 8. Malibu Township Council v. City of Malibu II (28-car garage)  
Los Angeles County Superior Court Case No. BS079965
  
- 9. Marine Forest Society v. California Coastal Commission Case No. 00AS00567 (Sacramento Superior Court)  
(Amicus)
  
- 10. Rubens v. City of Malibu  
Los Angeles County Superior Court Case No. SC060331
  
- 11. Silver v. City of Malibu  
Los Angeles County Superior Court Case No. BS081960
  
- 12. Sprint v. City of Malibu et al  
United States District Court Case No. SACV02660 DOC (MLGx)
  
- 13. Sweeney et al v. City of Malibu  
Los Angeles County Superior Court Case No. SS011602
  
- 14. Taxpayers for Livable Communities; Jay Liebig II v. City of Malibu  
Los Angeles County Superior Court Case No. BS0735585
  
- 15. Taxpayers for Livable Communities, Povah, et al. v. City of Malibu  
Los Angeles County Superior Court Case No. BS072794
  
- 16. City of Arcadia, et al. v. Regional Water Quality Board, et al.  
Los Angeles County Superior Court Case Nos. BS080807, BS080548, SO80753, BS080758, BS080791

**Conference With Legal Counsel – Anticipated Litigation pursuant to Government Code Section 54956.9(b):**

- 17. Number of Cases: 2

**Six-thirty p.m. Regular Session**

*Public Hearings will begin at 6:30 p.m., or as soon thereafter as possible, but in no event later than 7:30 p.m.*

Call to Order - Mayor

Roll Call - Recording Secretary

Pledge of Allegiance

Closed Session Report

Approval of Agenda

Report on Posting of Agenda – August 29, 2003; *Amended Agenda posted September 8, 2003*

**1. Ceremonial/Presentations**

A. Proclamation Declaring September as National Alcohol and Drug Addiction Recovery Month

**2. Written and Oral Communications from the Public**

A. Communications from the Public concerning matters which are not on the agenda but for which the City Council has subject matter jurisdiction. City Council may not act on these matters except to refer the matters to staff or schedule the matters for a future agenda.

B. City Council Subcommittee reports/Mayor and Councilmember reports and inquiries.

**3. Consent Calendar**

A. Previously Discussed Items

**1. Second Reading and Adoption of Ordinance No. 258**

At the Regular City Council meeting on August 11, 2003, Ordinance No. 258 was introduced on first reading. This Ordinance redefines “solicit” and “solicitations” so this provision is no longer unconstitutional.

Staff recommendation: Conduct second reading, unless waived, and adopt Ordinance No. 258, an ordinance amending the Charitable Solicitations Ordinance to limit the permitting requirement to charitable commercial solicitation.

Staff contact: City Clerk Pope, 456-2489 ext. 228

B. New Items

1. Waive further reading

Staff recommendation: After the City Attorney has read the title, waive full reading of ordinances considered on this agenda for introduction on first reading and/or second reading and adoption.

Staff contact: City Attorney Hogin, 456-2489 ext. 228

2. Approve Warrants

Staff recommendation: Allow and approve warrant demand numbers 22757 through 22949 listed on the register from the General Fund and direct the City Treasurer to pay out the funds to each of the claimants listed in Warrant Register No. 293 in the amount of the warrant appearing opposite their names, for the purposes stated on the respective demands in a total amount of \$786,874.94, including ADP payroll voucher numbers 5179099 – 5179108 in the amount of \$99,193.37.

Staff contact: Administrative Services Director James, 456-2489 ext. 224

3. Approval of Minutes

Staff recommendation: Approve City Council meeting minutes for the Regular City Council meetings held on April 28, 2003 and August 11, 2003 and the Adjourned Regular City Council meeting held on August 5, 2003.

Staff contact: City Clerk Pope, 456-2489 ext. 228

4. Denial of Claim for Damages filed by Edward A. Dandrea

The City was served with a claim by Edward A. Dandrea alleging damage to the windshield of his vehicle caused by a construction truck. This item requests Council denial of said claim.

Staff recommendation: Deny claim filed by Edward A. Dandrea.

Staff contact: City Clerk Pope, 456-2489 ext. 228

5. Denial of Claim for Damages filed by R. Kevin Fisher

The City was served with a claim by R. Kevin Fisher alleging damages due to the City's failure to process coastal permits. This item requests Council denial of said claim.

Staff recommendation: Deny claim filed by R. Kevin Fisher.

Staff contact: City Clerk Pope, 456-2489 ext. 228

6. Memorandum of Understanding for Reserve of Proposition C Funds

This Memorandum of Understanding will allow the City to reserve lapsing Prop C funds for the Zumirez Drive project

Staff recommendation: Approve the Memorandum of Understanding (MOU) with the Los Angeles County Metropolitan Transportation Authority (MTA) for the reserve of Proposition C funds for use on the Zumirez Drive Realignment Project.

Staff contact: Administrative Services Director James, 456-2489 ext. 224

7. Approval of Slate of Appointees for the 2003-04 Youth Commission

There are eleven vacancies to be filled on the Harry Barovsky Memorial Youth Commission. Fifteen applications were received and a recommended slate of appointments has been provided. Members of the Youth Commission are appointed by the entire Council.

Staff recommendation: Approve the following slate of candidates for appointment to the Harry Barovsky Memorial Youth Commission for the terms indicated: Anita Hoffman, term ending June 2004; Erin Barlow, term ending June 2005; Elle Sandbloom, term ending June 2005; John Caridad, term ending June 2005; Zackary Drapkin, term ending June 2004; Diva Kass, term ending June 2005; Camden Vilkin, term ending June 2004; Melissa Caridad, term ending June 2005; Chanel Kass, term ending June 2004; Sky Shachory, term ending June 2004; and Ben Hoffman, term ending June 2004.

Staff contact: Parks and Recreation Director Adams, 456-2489 ext. 228

8. Amendment to the Consultant Contract for the Preparation of the Environmental Impact Report (EIR) for Malibu Sycamore Grove Office Park and Civic Center Way Retail Park (formerly known as Shultz)

Christopher A. Joseph & Associates, the environmental consultant of record, has indicated that completion of the EIR will necessitate an increase in cost. The cost of the environmental review plus City administrative review cost will be borne by the applicant.

Staff recommendation: Approve Agreement Amendment in the aggregate amount of \$23,110 between Christopher A. Joseph and Associates (CAJA) and the City of Malibu for the preparation of the Environmental Impact Report (EIR) for Malibu Sycamore Grove Office Park and Civic Center Way Retail Park.

Staff contact: Interim Planning Manager Knight, 456-2489 ext. 234

9. Amendment to Agreement for Professional Engineering Services for Las Flores Canyon Creek Restoration

*Staff recommendation: Authorize the City Manager to execute Amendment No. 1 to the professional services agreement with CH2M Hill for an amount not to exceed \$281,800 (total contract amount not to exceed \$306,800) to provide professional engineering and design services for the Las Flores Canyon Creek restoration project.*

*Staff contact: Acting City Engineer Sanchez, 456-2489 ext. 237*

**4. Ordinances and Public Hearings**

*This portion of the agenda is for ordinances and for advertised hearing items where formal public testimony on each item is received prior to City Council action; the public hearings will begin at 6:30 p.m., or as soon thereafter as possible, but in no event later than 7:30 p.m.*

A. Adopt Fees for Public Works Plan Check, Public Works Inspection and Facility Use Fees for Malibu High School and Point Dume School Auditorium

Resolution No. 03-49 establishes fees for Public Works Plan Checks and Inspections. It also establishes facility use fees for Malibu High School and Point Dume as required by the Joint Use Agreement with the School District.

Staff recommendation: 1) Conduct the public hearing; and 2) adopt Resolution No. 03-49 amending Resolution No. 03-20 and establishing a Public Works Plan Check Fee, a Public Works Inspection Fee and Facility Use Fees for Malibu High School and Point Dume School Auditorium.

Staff contact: Administrative Services Director James, 456-2489 ext. 224

B. ADOPTION OF RESOLUTIONS AND ORDINANCES FOR THE PROPOSED WINDSAIL DEVELOPMENT AGREEMENT – The proposed project consists of an application to reconstruct the former Windsail Restaurant into a new 9,555 square foot restaurant and day spa facility. In addition to the requested Development Agreement, the application includes requests for an amendment to the General Plan Land Use Map and Zoning Map from Multi-Family Residential (MF) to Visitor Serving Commercial (CV); a Conditional Use Permit for a restaurant and bar facility; a Variance to allow parking in the front yard setback area; a Variance for a reduction in the amount of required landscaping; and a Demolition Permit to tear down the existing 7,500 square foot restaurant building. APPLICANT: Weintraub Financial; OWNER: Weintraub Financial; LOCATION: 22706 Pacific Coast Highway; SITE ACREAGE: 1.11 Acres; ZONING: Existing: Multi-Family Residential; Proposed: Commercial Visitor Serving (CV-1) (Continued from August 11, 2003)

The City Council will consider the adoption of resolutions and ordinances approving a Development Agreement and associated entitlements to allow for the reconstruction of the former Windsail restaurant into a new 9,555 square foot restaurant and day spa facility. The proposed Development Agreement allows for an increase in the projects Floor Area Ratio in exchange for public benefit.

Staff recommendation: 1) Adopt Resolution No. 03-40 adopting Mitigated Negative Declaration No. 02-002 for a Development Agreement to construct a 9,555 square foot Restaurant/Bar and Day Spa Facility on property at 22706 Pacific Coast Highway (Weintraub Financial); 2) Adopt Resolution No. 03-38 approving General Plan Amendment 02-001 to Change the General Plan Land Use Map from Multi-Family Residential to Commercial Visitor Serving on a 1.1 Acre Property Known as Assessor Parcel Numbers 4452-004—38, 040, and 042, Located at 22706 Pacific Coast Highway (Weintraub Financial); 3) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 255 an Ordinance of the City of Malibu Adopting Zoning Map Amendment 02-001 Amending the Zoning Map from Multi-Family Residential (MF) to Commercial Visitor Serving (CV-1) on a 1.1 Acre Property Known as Assessor Parcel Numbers 4452-004-038, 040, and 042, Located at 22706 Pacific Coast Highway (Weintraub Financial); 4) Adopt Resolution No. 03-39 Approving Conditional Use Permit No. 02-006, Variance Nos. 02-014 and 02-015, and Demolition Permit No. 02-005 for a New 9,555 Square Foot Restaurant/Bar and Day Spa Facility at 22706 Pacific Coast Highway (Weintraub Financial); 5) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 256 an Ordinance of the City of Malibu, California, Approving a Development Agreement Between the City of Malibu and Weintraub Financial Services, Inc.; and 6) Direct staff to schedule second reading and adoption of Ordinance Nos. 255 and 256 on September 22, 2003.

Staff contact: Interim Planning Manager Knight, 456-2489 ext. 243

- C. GENERAL PLAN AMENDMENT NO. 02-002; ZONING MAP AMENDMENT NO. 02-002; NEGATIVE DECLARATION NO. 02-003 An Amendment to the Malibu General Plan Land Use Map from Rural Residential - 20 to Rural Residential - 5, and an Amendment to the Malibu Zoning Map from Rural Residential - 20 to Rural Residential - 5, on 68 Acres and Open Space Dedication of 57 Acres along the North side of Latigo Canyon Road, approximately 4,000 feet North of the Latigo Canyon/Pacific Coast Highway Intersection. APPLICANT: City of Malibu; OWNER: George J. Rubens; SETTLEMENT: George J. Rubens, as trustee of the George J. Rubens and Yvonne M. Rubens Family Trust, et al, and the City of Malibu; LOCATION: North side of Latigo Canyon Road, approximately 4,000 feet North of the Pacific Coast Highway/Latigo Canyon Road intersection; GROSS ACREAGE: 68 acres (Continued from June 23, 2003)

This application for rezoning of a portion of the subject property implements the terms of the settlement agreement in the matter of Rubens v. City of Malibu. At the Planning Commission meeting of June 17, 2002, the General Plan Amendment, Zoning Map Amendment, and Negative Declaration were recommended for denial. This item was continued at the June 23, 2003 City Council meeting.

Staff recommendation: (1) Adopt Resolution No. 03-25 Adopting Negative Declaration No. 02-003 for General Plan Amendment 02-002 to Change the General Plan Land Use Map From Rural Residential 20 to Rural Residential 5 and Zoning Map Amendment No. 02-002 to Change the Zoning Map From RR-20 to RR-5 on 68 Acres of Land Known as Assessor Parcel Numbers 4459-003-007 and 008, Generally Located on the North Side of Latigo Canyon Road, Approximately 4,000 Feet From the Latigo Canyon Road / Pacific Coast Highway Intersection (Rubens Family Trust); (2) Adopt Resolution No. 03-26 A Resolution of the City Council of the City of Malibu Approving General Plan Amendment 02-002 to Change the General Plan Land Use Map From Rural Residential 20 to Rural Residential 5 on 68 Acres of Land Known as Assessor Parcel Numbers 4459-003-007 and 008, Generally Located on the North Side of Latigo Canyon Road, Approximately 4,000 Feet From the Latigo Canyon Road / Pacific Coast Highway Intersection (Rubens Family Trust), and (3) After the City Attorney reads the title of the ordinance, introduce on first reading Ordinance No. 241, An Ordinance of the City of Malibu Adopting Zoning Map Amendment No. 02-002 to Change the Zoning Map From RR-20 (One Unit Per Twenty Acres) to RR-5 (One Unit Per Five Acres) on 68 Acres of Land Known as Assessor Parcel Numbers 4459-003-007 And 008, Generally Located on the North Side of Latigo Canyon Road, Approximately 4,000 Feet From the Latigo Canyon Road / Pacific Coast Highway Intersection (Rubens Family Trust); and (4) Direct staff to schedule second reading and adoption of Ordinance No. 241 for the September 22, 2003 City Council meeting.

Staff contact: Interim Planning Manager Knight, 456-2489, ext. 243

## 5. **Old Business**

None.

## 6. **New Business**

None.

**7. Council Items****A. Public Access on Private Beach Areas with Public Easements (Mayor Pro Tem Barovsky)**

*Mayor Pro Tem Barovsky is requesting the Council obtain a report on the Sheriff's Department Policy on enforcing public access on private beach areas where public easements exist.*

**Adjournment****Future Meetings**

Mon., September 22, 2003	6:30 p.m.	Regular City Council Meeting	City Hall Council Chambers
Mon., October 13, 2003	6:30 p.m.	Regular City Council Meeting	City Hall Council Chambers
Mon., October 27, 2003	6:30 p.m.	Regular City Council Meeting	City Hall Council Chambers

**Guide to the City Council Proceedings**

**The Oral Communication** portion of the agenda is for members of the public to present items which are not listed on the agenda, but are under the subject matter jurisdiction of the City Council. No action may be taken under this section except to direct staff unless the Council, by a two-thirds vote, determines that the need to take action arose after the posting of the agenda or that the item presents an emergency situation for which action is required prior to the next regularly scheduled meeting of the City Council. Although no action may be taken on these non agenda items, the Council and staff will follow up on those items needing response. Each speaker is limited to (3) three minutes. Time may be surrendered by deferring (1) one minute to another speaker, on the same item, not to exceed a total of (8) eight minutes. The speaker wishing to defer time must be present when the item is heard. In order to be recognized and present an item, each speaker must complete and submit to the Recording Secretary a Request to Speak form prior to the beginning of the item being announced by the Mayor (forms are available at the Chamber doors). Speakers are taken in the order slips are submitted.

**Items in Consent Calendar Section A** have already been considered by the Council at a previous meeting where the public was invited to comment, after which a decision was made. These items are not subject to public discussion at this meeting because the vote taken at the previous meeting was final. Resolutions concerning decisions made at previous meetings are for the purpose of memorializing the decision to assure the accuracy of the findings, the prior vote, and any conditions imposed.

**Items in Consent Calendar Section B** have not been discussed previously by the Council. If discussion is desired, an item may be removed from the Consent Calendar and will be considered individually. Councilmembers may indicate a negative or abstaining vote on any individual item by so declaring prior to the vote on the motion to adopt the entire Consent Calendar. Items excluded from Consent Calendar will be taken up by the Council following the action on the consent calendar. The Council first will take up the items for which public speaker requests have been submitted. Public speakers are limited to (3) three minutes each. If a speaker slip is submitted late the speaker's time will be limited to (2) minutes. If more than 10 speaker slips are submitted each speaker's time will be limited to (2) two minutes each.

**Items set for Public Hearing** commence at 7:30 p.m. or as soon thereafter as practical. At that time the City Council will stop its other proceedings and move directly to Public Hearing items. At the conclusion of Public Hearings the City Council will continue the agenda where it left off. For Public Hearings involving zoning matters the appellant will be given 15 minutes to present their position to the City Council, including rebuttal time. All other testimony shall be limited to (3) three minutes per person and follow the rules as set forth under Oral Communication.

**Items in Old Business** are items which have appeared on previous agendas but have either been continued or tabled to this meeting with no final action having been taken. Public comment on any item is permitted under the public comment rules. Speakers should address whether they are supportive or opposed to either the recommended action or the motion before the City Council for decision.

**Items in New Business** are items which are appearing for the first time for formal action. Public comment on any item is permitted under the public comment rules. Speakers should address whether they are supportive or opposed to either the recommended action or the motion before the City Council for decision.

**City Council Items** are items which individual members of the City Council may bring up in terms of reporting to other members of the City Council, to propose future agenda items or to suggest future staff assignments. Items discussed under City Council Items follow the same rules as set forth under Oral Communications in terms of the actions the City Council may take on any item brought up under this portion of the agenda. Each Councilmember's oral item presentations are limited to four minutes. No new items will be taken-up after 10:30 p.m. without a two-thirds vote of the City Council.



City Council meetings are aired on City of Malibu Government Access Channel 3. Broadcasts on Channel 3 occur at 8:00 a.m. and 8:00 p.m Monday, Wednesday and Friday, Tuesday and Thursday at 8:00 p.m., and at 2:00 p.m. on both Saturday and Sundays. Copies of the staff reports or other written documentation relating to each item of business described above are on file in the office of the City Clerk, Malibu City Hall, 23815 Stuart Ranch Road, Malibu, California and are available for public inspection during regular office hours which are 8:00 a.m. to 5:00 p.m., Monday through Thursday and 8:00 a.m. to 4:30 p.m., Friday. Copies of staff reports may be purchased for \$0.10 per page. Pursuant to State law, this agenda was posted at least 72 hours prior to the meeting at the Malibu City Offices, Malibu Community Center at Point Dume and Malibu Community Library. The City Hall phone number is (310) 456-2489. To contact City Hall using a telecommunication device for the deaf (TDD), please call (800) 735-2929 and a California Relay Service operator will assist you. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact Building & Safety Director Victor Peterson, (310) 456-2489, ext. 251. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.102-35.104 ADD Title II]. Requests for use of audio or video equipment during a Council meeting should be directed to Jena Chanel at (310) 456-2489 ext. 278 or jchanel@ci.malibu.ca.us at least 48 hours prior to the meeting."

I hereby certify under penalty of perjury, under the laws of the State of California, that the foregoing agenda was posted in accordance with the applicable legal requirements. Dated this 9<sup>th</sup> day of September 2003.

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Lisa Pope, City Clerk